the extent of the grant. An examination of the former holdings of the court I think will remove the difficulty that the writer of the note discovers. The principle laid down in *Terrett* v. *Taylor*, 9 Cranch, that a legislative grant is not revocable, must be held to apply to that which is properly the subject-matter of such a grant, *e. g.*, public lands held for sale. Else the integrity of our institutions might be very seriously impaired if whatever of public right the Legislature should see fit to make the subject of a grant is to be held to be beyond recall.

"There are some things which the Legislature cannot permanently grant away; its title to the harbors of the country is one."

EVIDENCE — ADMISSION OF DECLARATIONS TO PROVE THE INTENTION OF THE DECLARANT. — The recently decided cases of *Commonwealth* v. *Trefethen*, 31 N. E. Rep. 961 (Mass.), and *Siebert* v. *People*, 32 N.E. Rep. 431 (Ill.), show a curious divergence of authority. In both cases the question was the same, and the decision diametrically opposite. Both were indictments for murder, and in both the defendant, to establish the defence of suicide, offered in evidence statements made by the deceased to third parties that he intended to kill himself. In both, the lower court excluded the evidence, and the case came up on the defendant's exceptions. The Illinois court sustained the ruling below, on the ground that to make such statements admissible they must accompany and qualify some act which would itself be admissible, — must be part of the *res gestæ*. In their decision they cite with approval the Massachusetts case of *Commonwealth* v. *Felch*, 132 Mass. 22.

On the other hand, in *Commonwealth* v. *Trefethen*, the Massachusetts court expressly refused to follow its earlier decision, and sent the case back for a new trial, laying down the rule that in any case where a man's intention is provable, his declarations, made at or about the time when such intention is alleged to have existed, are admissible.

In its present form the rule of the Massachusetts court is a novelty; but it is foreshadowed in several classes of cases where intention or some other mental state has been in issue. Bankruptcy cases, where it was material to prove that the bankrupt had acted with intent to defraud his creditors, *Rawson* v. *Haigh*, 9 J. B. Moore, 217, and cases where the validity of a will was attacked on the ground of insanity, *Waterman* v. *Whitney*, 11 N. Y. 157, afford instances of the admission of direct statements of intention. In general, these and similar decisions have proceeded on the *res gestæ* ground, even where, as in *Lake Shore Ry.* v. *Herrick*, 29 N. E. Rep. 1052, it is most difficult so to explain them; or the declarations have been regarded as "verbal facts" themselves evidential, *Chase* v. *Lowell*, 151 Mass. 422; or they have been let in, as in *Du Bost* v. *Beresford*, 2 Camp. 511, without any clear indication of the reason for their admission. So in speeches showing that the speaker thought himself dying, admitted as a foundation for dying declarations, the evidence seems to have been let in as a matter of course. *Commonwealth* v. *Cooper*, 5 Allen, 495, 497; *Commonwealth* v. *Haney*, 127 Mass. 455; *Rex* v. *Spilsbury*, 7 C.& P. 187; 1 Greenleaf, § 187.

The first case containing a clear and explicit statement of the rule was *Mutual Ins. Co.* v. *Hillmon*, 145 U. S. 285, in which, to prove that a man left Wichita on a certain day, the Supreme Court allowed his letters writ-

ten a short time before to be put in to show that it had been his intention to do so. These letters might have been admitted as part of the *res gestæ;* but the opinion, by Mr. Justice Gray, proceeds on the broad ground that "whenever the intention is of itself a distinct and material fact in the chain of circumstances, it may be proved by contemporaneous, oral, or written declarations of the party."

Cases like this and *Commonwealth* v. *Trefethen* establish an exception to the Hearsay rule. There is a clear distinction between such statements as are here admitted, and involuntary cries or exclamations, whether of pain or pleasure, the admissibility of which has long been recognized. These are let in because they are involuntary, the direct effect of physical and mental conditions whose presence they indicate, as smoke indicates the presence of fire. It is true they can, like almost all natural effects, be produced by art so as to mislead; but this is so difficult, and so rarely done with success, that the possibility is ignored. When, however, words voluntarily spoken and fully subject to the will of the speaker are admitted, this reasoning ceases to apply, and we are dealing with what the Illinois court very justly calls "mere hearsay." The exception, if justifiable, is so on two grounds,—first, because the statements are so near to the mental fact which they are offered to prove that the objections to hearsay are reduced to a minimum; and second, because facts of this class are so difficult of proof by any other means that in the interests of justice it becomes necessary to let in the evidence.

A later Massachusetts case, *Viles* v. *City of Waltham*, 32 N. E. Rep. 901, suggests as a possible qualification of *Commonwealth* v. *Trefethen* that declarations by a party to the suit shall not be received in his favor "unless made under such circumstances as give them some corroboration, such corroboration being found, as a rule, in the fact that they accompany and explain acts which would themselves be competent evidence." Logically, this qualification is not necessary, for the objection to the statements as hearsay being done away with, and the modern practice allowing parties to testify in their own favor, it would seem that their declarations should be equally admissible with those of third parties. But to get a good working rule there is much to be said for the suggestion, the adoption of which would, by removing the danger of admitting statements made with a deliberate purpose to use them as evidence, greatly diminish any objection to the Massachusetts doctrine.

With or without qualification, the Massachusetts law seems better law than the Illinois, which is likely to work grave injustice in many cases, as it has perhaps done in *Siebert* v. *People*, where the accused was deprived of the means of proving what might in a doubtful case have appeared to the jury a material fact. These statements proved at least that the thought of suicide was present to the mind of the deceased shortly before his unexplained and violent death.

ERRATA.

SIR FREDERICK POLLOCK has made the following corrections of his article on "Contracts in Early English Law," vol. vi. HARVARD LAW REVIEW, page 393, line 18: *for* "buyer" *read* "seller;" *id.*, page 396, note 6, *for* "deviation" *read* "derivation."